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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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LAVERNON TITUS,  
Plaintiff,

v.

CITY AND COUNTY OF SAN  
FRANCISCO, et al.,  
Defendants.

Case No. 13-cv-02401-JST

**ORDER GRANTING MOTION FOR  
SUMMARY JUDGMENT**

Re: ECF No. 42

Before the Court is a motion for summary judgment filed by the City and County of San Francisco, San Francisco Police Department Officers Andrew Johnson, Eric Vintero, and Patrick Brady. ECF No. 42. The Court will grant Defendants' motion.

**I. BACKGROUND**

**A. Factual History**

For the purposes of summary judgment, the Court assumes the following facts pursuant to Plaintiff's First Amended Complaint, ECF No. 40 ("FAC").<sup>1</sup> Plaintiff was driving his work truck to Veteran's Administration Hospital when he was stopped by Officer Eric Vintero on May 7, 2012. ECF No. 40 at 4-5. Officer Vintero told Plaintiff that he was pulled over because he did not stop at a stop sign. Id. at 5. Plaintiff informed Officer Vintero that he was on his way to the hospital because he was a diabetic and was feeling very sick. Id. Plaintiff "was sweating, weak and visibly shaking and was swaying when he stood." Id.

Officer Vintero only instructed Plaintiff to remain in the truck. Id. Officers Andrew

<sup>1</sup> In their Reply to Plaintiff's opposition, Defendants object to a number of facts and statements in Plaintiff's Declaration, to the extent they conflict with his deposition testimony. ECF No. 52 at 8-9. Defendants also object to the Declaration and attached exhibits because they were untimely filed, as well as to certain exhibits because they contain unauthenticated materials. Id. Because the disputed facts are unnecessary to the Court's decision, the Court does not reach these evidentiary objections.

1 Johnson and Patrick Brady arrived at the scene, at which time Officer Vintero ordered Plaintiff out  
2 of his vehicle.<sup>2</sup> Id. Plaintiff was ordered to place his hands on the hood and spread his legs, and  
3 then was told to stand on the sidewalk. Id. Officer Vintero allowed Plaintiff to sit when Plaintiff  
4 reiterated that he felt sick. Id. Plaintiff alleges that the Officers were rude and yelled at him. Id.  
5 at 6. Plaintiff was in custody for a total of about 40 minutes. Id. at 4.

6 The officers subsequently had Plaintiff's car towed, but allowed Plaintiff leave with a  
7 citation. Id. Plaintiff asked for a ride to the hospital; the Officers refused because it was "only  
8 two blocks away." Id. at 6. Plaintiff walked to the hospital and was taken in for examination, but  
9 alleges that "the risk of being detained could have caused Plaintiff to have a stroke given his high  
10 level of sugar." Id.

#### **B. Procedural History**

11 Plaintiff filed his initial complaint in San Francisco Superior Court, and Defendants  
12 removed the case pursuant to 28 U.S.C. § 1441. Plaintiff was granted leave to amend his initial  
13 complaint, and in August 2014 Plaintiff filed his FAC, alleging that Defendants were liable for  
14 intentional infliction of emotion distress and deliberate indifference to his medical needs under  
15 Section 1983, in violation of his Fourteenth Amendment rights. ECF No. 40 at 6-9. Defendants  
16 filed this motion for summary judgment. ECF No. 42.

#### **C. Jurisdiction**

17 This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because Plaintiff's cause  
18 of action arises under the United States Constitution.

#### **II. LEGAL STANDARD**

21 Summary judgment is proper when "there is no genuine dispute as to any material fact and  
22 the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). See Celotex Corp. v.  
23 Catrett, 477 U.S. 317, 323-24 (1986). A dispute is genuine only if there is sufficient evidence for  
24 a reasonable fact finder to find for the non-moving party, and material only if the disputed fact  
25 might affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49

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27 <sup>2</sup> Defendants explain in their motion for summary judgment that Plaintiff was pulled over because  
28 his vehicle registration was expired, and the car had mismatched license plates. ECF No. 42 at 4.  
Plaintiff's FAC does not include this information.

1 (1986). The court must draw all reasonable inferences in the light most favorable to the non-  
2 moving party. Johnson v. Rancho Santiago Cmt. Coll. Dist., 623 F.3d 1011, 1018 (9th Cir. 2010).  
3 However, unsupported conjecture or conclusory statements do not create a genuine dispute as to  
4 material fact and will not defeat summary judgment. Surrell v. Cal. Water Serv. Co., 518 F.3d  
5 1097, 1103 (9th Cir. 2008).

6 **III. DISCUSSION**

7 Plaintiff brings two causes of action: a claim for intentional infliction of emotional distress  
8 and a claim for deliberate indifference to medical needs. For the reasons stated below, Plaintiff  
9 has not provided sufficient facts in his FAC to present a genuine issue of material fact in any of  
10 these claims.

11 **A. Intentional Infliction of Emotional Distress**

12 Defendants' seek summary judgment against Plaintiff's claim that they intentionally  
13 inflicted emotional distress during the traffic stop. ECF No. 40 at 6. The Court concludes that,  
14 even viewing all facts in favor of the Plaintiff, no reasonable jury could find that Defendants'  
15 actions rose to the level of outrageousness sufficient to support a claim for intentional infliction of  
16 emotional distress.

17 To state a claim for intentional infliction of emotional distress, a plaintiff must show:  
18 “(1) outrageous conduct by the defendant; (2) the defendant’s intention of causing or reckless  
19 disregard of the probability of causing emotional distress; (3) the plaintiff’s suffering severe or  
extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the  
defendant’s outrageous conduct.” George v. Sonoma County Sheriff’s Dep’t, No. C-08-02675  
21 EDL, 2009 WL 656299, \*6 (N.D. Cal. Mar. 12, 2009) (citing Trerice v. Blue Cross of Cal., 209  
22 Cal.App.3d 878, 883 (1989); Davidson v. City of Westminster, 32 Cal.3d 197, 209 (1982)).  
23 Plaintiff must also show that the outrageous conduct was “so extreme as to exceed all bounds of  
24 that usually tolerated in a civilized society.” Id. Rude or insensitive conduct is insufficient to  
25 meet the requirements for intentional infliction of emotional distress. Id.

26 Defendants argue that Plaintiff has not demonstrated any conduct by the officers' that  
27 would rise to the level of “outrageousness” required to make out a claim for intentional infliction  
28

1 of emotional distress. Plaintiff does not offer argument in opposition to Defendants' motion for  
2 summary judgment as to his intentional infliction of emotional distress claim. Looking to his  
3 complaint, Plaintiff alleges that during the course of a valid traffic stop, officers ordered Plaintiff  
4 to hand over his license and registration, instructed him to get out of the car, and made him spread  
5 his legs and place his hands on the hood. ECF No. 40 at 5. Plaintiff alleges that officers yelled at  
6 him and were "rude and impolite the entire time." Id. at 5-6. When Plaintiff asked for a ride to  
7 the hospital because he was feeling ill, Defendants refused, because transporting a passenger who  
8 was not handcuffed and had not been thoroughly searched was contrary to department policy.  
9 ECF No. 42 at 5.

10 Plaintiff alleges no conduct by Defendants that allow a reasonable jury to find that their  
11 actions were "so extreme as to exceed all bounds of that usually tolerated in a civilized society."  
12 Id. Plaintiff does not contest the validity of the traffic stop or deny Defendants' claims that, while  
13 driving a vehicle with a suspended license, he ran a stop sign. See ECF No. 29 at 2  
14 (acknowledging that Plaintiff does not make claims of "false detention and false imprisonment").  
15 Although Plaintiff claims he was visibly ill throughout the length of the stop, it was not outrageous  
16 for police officers to undertake a short traffic stop after witnessing him operate a vehicle illegally  
17 in a manner that posed a danger to others. Once that stop was completed, Defendants' only  
18 additional action was to deny Plaintiff's request to drive him to a hospital that was two blocks  
19 away. Such a refusal is not "so extreme as to exceed all bounds of that usually tolerated in a  
20 civilized society." George, 2009 WL 656299, \*6.

21 The Court therefore grants Defendants' motion for summary judgment as to Plaintiff's  
22 intentional infliction of emotional distress claim.

23 **B. Deliberate Indifference**

24 Defendants' also seek summary judgment as to Plaintiff's claims they acted with deliberate  
25 indifference to his serious medical needs by stopping him and then refusing to provide him a ride  
26 two blocks to the hospital. Defendants contend that Plaintiff has failed to create a genuine issue as  
27 to whether his Fourteenth Amendment rights were violated. Defendants argue in the alternative  
28 that, even if Defendants' rights were violated, Defendants are entitled to qualified immunity as

1 Defendants' conduct did not "violate clearly established statutory or constitutional rights of which  
2 a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)  
3 (citations omitted). Because Defendants could not have known that their brief detention and  
4 subsequent release of Plaintiff violated his constitutional rights, the Court will grant summary  
5 judgment in their favor as to Plaintiff's deliberate indifference claim.

6 To determine whether to grant qualified immunity, a court must ask whether a plaintiff's  
7 rights were violated and if that right that was "clearly established." Pearson v. Callahan, 555 U.S.  
8 223, 236 (2009). Courts are "permitted to exercise their sound discretion in deciding which of the  
9 two prongs of the qualified immunity analysis should be addressed first in light of the  
10 circumstances in the particular case at hand." Id. "If an official could reasonably have believed  
11 her actions were legal in light of clearly established law and the information she possessed at the  
12 time, she is protected by qualified immunity." Franklin v. Fox, 312 F.3d 423, 437 (9th Cir. 2002).

13 It is clearly established in the law that the Fourteenth Amendment protects against police  
14 officers' acting with deliberate indifference toward the serious medical needs of an individual they  
15 have detained. See Gibson v. Cnty. of Washoe, Nev., 290 F.3d 1175, 1187 (9th Cir. 2002).  
16 (collecting cases holding that deliberate indifference claims brought by arrestee arise "from the  
17 due process clause rather than the Eighth Amendment's protection against cruel and unusual  
18 punishment"). But for the purposes of the qualified immunity analysis, "the right allegedly  
19 violated must be defined at the appropriate level of specificity before a court can determine if it  
20 was clearly established." Wilson v. Layne, 526 U.S. 603, 615 (1999). Therefore, the task of  
21 "determining whether the law was clearly established 'must be undertaken in light of the specific  
22 context of the case, not as a broad general proposition.'" Estate of Ford v. Ramirez-Palmer, 301  
23 F.3d 1043, 1050 (9th Cir. 2002) (quoting Saucier v. Katz, 533 U.S. 194, 201 (2001)). The Ninth  
24 Circuit has held that, in the context of claims for deliberate indifference, courts must grant officers  
25 qualified immunity where the circumstances would not have informed a reasonable officer that  
26 their conduct "posed such a substantial risk of serious harm that doing so would be  
27 constitutionally impermissible." Estate of Ford v. Ramirez-Palmer, 301 F.3d 1043, 1053 (9th Cir.  
28 2002).

1       The parties dispute how much information Defendants had about Plaintiff's medical  
2 condition. Plaintiff alleges that he "was in dire need of emergency treatment when he was  
3 detained, so much that it was obvious that even a layperson would easily recognize the necessity  
4 for immediate medical attention." ECF No. 40 at 8. Plaintiff also claims that he told officers he  
5 was sick and had been en route to seeking emergency care at Veterans Hospital when he was  
6 stopped. Id. Because the qualified immunity inquiry must be conducted viewing all facts in favor  
7 of the plaintiff, the Court concludes that there is at least a genuine issue as to whether Plaintiff  
8 made Defendants aware of a risk to his health such that Defendants were aware of Plaintiff's  
9 medical needs at the time they refused to transport him to the Hospital.

10       Nevertheless, the Court concludes that Defendants are entitled to qualified immunity,  
11 because then-existing law did not clearly inform Defendants that validly stopping Plaintiff for a  
12 short period of time and then allowing him to walk unassisted two blocks to a hospital posed such  
13 a substantial risk of harm as to be constitutionally impermissible. Estate of Ford, 301 F.3d at  
14 1053. Plaintiff was lawfully stopped after he ran a stop sign. Plaintiff does not contest the legality  
15 of his initial detention or claim that he was detained for longer than necessary to complete the  
16 investigation into his traffic violation and suspended license. Although Plaintiff alleges he was  
17 visibly ill during the stop, he cites not authority for the proposition that illness entitles an  
18 individual to be released from a brief and otherwise lawful traffic stop.

19       Although Plaintiff contends Defendants' acted unlawfully in detaining him while he was  
20 ill, Plaintiff's deliberate indifference claim also rests on an allegation that officers acted  
21 unlawfully by not keeping him in their custody further and transporting him in a police vehicle to  
22 the Hospital. Even if the Court accepts that the Defendants acted with deliberate indifference to  
23 Plaintiff's serious medical needs by towing his car and failing to provide him with a ride to the  
24 hospital when he appeared to be physically ill, Defendants could not have been expected to know  
25 that their decision to release Plaintiff had constitutional ramifications. Plaintiff has pointed to no  
26 case where any court has concluded that officers acted with deliberate indifference to an  
27 individual's health by releasing him from their custody and allowing him to proceed to a nearby  
28 hospital unassisted.

1           Deliberate indifference claims commonly arise where a Plaintiff is incarcerated or detained  
2 and therefore dependent on officers for medical care. Because a detained or incarcerated  
3 individual “must rely on prison authorities to treat his medical needs[,] if the authorities fail to do  
4 so, those needs will not be met.” Estelle v. Gamble, 429 U.S. 97, 103 (1976). Plaintiff cites to  
5 cases in which defendants were found to have acted with deliberate indifference where they  
6 refused to provide a plaintiff with medical care while keeping that plaintiff in custody, rendering  
7 the plaintiff unable to obtain any medical care. See ECF No. 49 at 8-9 (citing Nerren v.  
8 Livingston Police Department, 86 F.3d 469 (5th Cir. 1986); Estate of Cole by Pardue v. Fromm,  
9 94 F.3d 254, 258 (7th Cir. 1996)). But none of those cases would have given notice to Defendants  
10 that their decision to *release* Plaintiff from their custody and allow him to proceed to a hospital  
11 only two blocks away constituted a Fourteenth Amendment violation. As Plaintiff was able to get  
12 to the hospital unassisted on foot after he was released, Defendants’ brief and lawful detention did  
13 not seriously compromise Plaintiff’s ability to treat his own medical needs.

14           Defendants state that they deferred to their departmental policy to refuse to provide rides to  
15 individuals who were not arrested and had not been thoroughly searched. No clearly-established  
16 constitutional law conflicted with this policy. Therefore, the Court finds that Defendants are  
17 entitled to summary judgment as to Plaintiff’s deliberate indifference claim.

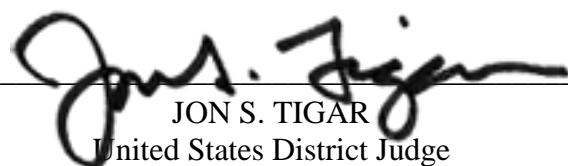
18           **IV. CONCLUSION**

19           For the foregoing reasons, Defendant’s motion for summary judgment is GRANTED in its  
20 entirety.

21           Defendants are ordered to provide a form of proposed judgment to the Court within 15  
22 days of entry of this order.

23           **IT IS SO ORDERED.**

24           Dated: December 22, 2014

25             
26           JON S. TIGAR  
27           United States District Judge  
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